

lost earnings. However, where the participant does make up the Employee Contributions pursuant to part 1605, the Agency Matching Contributions associated with those belated Employee Contributions (which must be made in accordance with part 1605) will be subject to lost earnings. With respect to such belated Agency Matching Contributions the procedures described in paragraphs (a)(1) through (a)(4) of this section shall apply.

§ 1606.6 Agency delay in paying employee.

Where, as the result of an employing agency error, a participant does not timely receive all or any part of the basic pay to which he or she is entitled, and as a result of that delay in receiving pay all or any part of the Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions are not submitted when they would have been had the employing agency error not occurred, all such belated Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions shall be subject to lost earnings. The procedures described in paragraphs (a)(1) through (a)(4) of § 1606.5 shall apply to all such belated contributions.

§ 1606.7 Contributions to incorrect investment fund.

(a) Where, as the result of an employing agency error, money was deposited to a participant's TSP account in an incorrect investment fund(s), the erroneous contribution shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the contributions submitted to the incorrect investment fund(s), the pay date for which it was submitted, the investment fund(s) to which it would have been deposited had the employing agency error not occurred, and the investment fund(s) to which it was actually deposited. If the employing agency has, prior to January 1, 1991 or in contravention of paragraph (b) of this section, removed the contribution from the incorrect investment fund(s) using a negative adjustment record and redeposited the money to the investment fund(s) in which it

would have been invested had the error not occurred, the employing agency must also indicate on the lost earnings record when these actions were taken.

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which erroneously invested contributions and associated earnings would currently be invested had the error not occurred. In computing lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper shall take into consideration any interfund transfers that were made effective on or subsequent to the date erroneous contribution was made, and that were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA;

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the account of the participant involved. If the lost earnings computed are negative, the amount computed shall be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the erroneous contributions and associated earnings would currently be invested had the error not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) The provisions of part 1605 notwithstanding, effective January 1, 1991, where employing agency error had caused money to be deposited to a TSP account in an incorrect investment fund, the employing agency may not remove the erroneously invested